

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4910 of 2006
To
FIRST APPEAL No.4929 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SPECIAL LAQ OFFICER & 1 - Appellant(s)

Versus

HEMANTSANG MOBATSANG - Defendant(s)

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Appearance :

FIRST APPEAL Nos. 4910 to 4929 of 2006

MR SUNIT S SHAH, GOVERNMENT PLEADER for Appellants.
MR AJ PATEL for claimant/s.

FIRST APPEAL Nos. 4918 to 4923 of 2006

MS KRINA P.CALLA, A.G.P. for Appellants.

MR AJ PATEL for claimant/s.

FIRST APPEAL NOS. 4924 to 4929 of 2006

MS TANUJA N.KACHCHHI, A.G.P. for Appellants

MR AJ PATEL for claimant/s.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 07/12/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are heard today.

2. All these appeals filed under Section 54 of the Land Acquisition Act, 1894 ['the Act' for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated December 30, 2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Cases No.2 of 2003 to 21 of 2003, by which the claimants have been awarded additional compensation at the rate of Rs. 32.00 ps. per sq.mt. for their acquired lands, over and above the compensation awarded to them by the

Special Land Acquisition Officer at the rate of Rs. 3.64 ps. per sq.mt. by his award dated May 13, 2002.

2. The Executive Engineer, Narmada Yojana, Division No.3/5, Dholka made a proposal to the State Government to acquire agricultural lands of village Koth, Taluka : Dholka, District : Ahmedabad for the public purpose of construction of Canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the Official Gazette on February 5, 2000. The owners of the lands were served with notices under Section 4(1) of the Act. On receipt of the notices, they opposed the proposed acquisition. After considering their objections, the Land Acquisition Officer forwarded his report as contemplated by Section 5A(2) of the Act to

the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Koth, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on May 15, 2000. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Land Acquisition Officer by his award dated May 13, 2002 offered compensation to the claimants at the rate of Rs. 3.64 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act

requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition Cases No.2 of 2003 to 21 of 2003.

3. On behalf of the claimants, witness Manubhai Prabhatsang was examined at Exh.40. The witness mentioned in his testimony before the Reference Court that the lands acquired were fertile and that the claimants were able to raise crops in different seasons. The said witness further asserted that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Bigha per year from the sale of agricultural produces, such as, cotton, grams, juvar, cumin-seeds, wheat etc. To support his claim that the lands acquired were highly fertile, the witness produced 7/12 Extract relating to the lands acquired at Exhs.16 to 37. After mentioning that his village was the

biggest village in Dholka Taluka, the witness produced previous award of the Reference Court relating to the lands of this very village at Exh.38, and claimed that on the basis of the said award, additional amount of compensation should be paid to the claimants. The witness also produced another award of the Reference Court relating to the lands of this very village at Exh.39 and claimed that on the basis of that award also, additional amount of compensation should be paid to the claimants. The witness asserted before the Reference Court that the lands, which were subject matter of the previous awards produced at Exh.38 & 39, were similar, in all respects, to the lands acquired in the instant case. Though this witness was cross-examined on behalf of the appellants at length, nothing could be elicited, nor the assertion made by him that the lands previously acquired were similar, in all respects, to the lands acquired in the instant case, could be demonstrated to be untrue.

On behalf of the appellants, witness Amrutlal Rishabhai, who was then discharging duties as Deputy Executive Engineer, was examined at Exh.52. This witness mentioned that the previous award of the Reference Court relating to the lands of this very village rendered in L.A.R.Nos.159 to 171 of 2001 was the subject matter of challenge in the High Court, and as the said award had not attained finality, the claimants were not entitled to enhanced compensation on the basis of the said award. According to this witness, the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired in the instant case and, therefore, also the claimants were not entitled to additional amount of compensation. However, in his cross-examination, he had to admit that most of the acquired lands from village Koth were irrigated and were similar in all respects including fertility.

4. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village produced at Exh.39, which was proximate, in point of time, to the notification published in the Official Gazette for the lands acquired in the instant case, was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. According to the Reference Court, Exh.38, though related to the lands of this very village, was not relevant for the purpose of determining market value of the lands acquired in the instant case. The Reference Court further found that previously the lands of village Koth were acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on April 23, 1998; whereas in the instant case, notification issued under Section 4(1) of

the Act was published in the Official Gazette on February 5, 2000 and in view of the time-gap between publication of the two notifications, the claimants were entitled to the benefit of reasonable rise in price of lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has held that the claimants are entitled to additional amount of compensation at the rate of Rs. 32/- Ps. per sq.mt. by the impugned judgment and award, giving rise to these appeals.

5. This Court has heard Ms. Krina P.Calla, learned counsel for the appellants as well as Mr.A.J.Patel, learned Counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

6. Though witness Manubhai Prabhatsang examined

on behalf of the claimants at Exh.40 could not make his assertion good that each claimant was earning net income of Rs.35,000/- to Rs. 40,000/- per Bigha per year from the sale of agricultural produces, there is no manner of doubt that the lands acquired were highly fertile and that the claimants were able to raise different crops thereon. This fact also stands established from the contents of 7/12 Extracts relating to the lands acquired, produced by the said witness at Exhs.16 to 37. The enhanced compensation was never claimed by the claimants on yield basis, nor on the basis of comparable sale instances. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village. As observed earlier, two previous awards of the Reference Court relating to the lands of this very village were produced by the claimants for consideration of the Court. On reappreciation of evidence adduced by the parties, this Court is of the opinion that notification issued under Section

4(1) of the Act, which was published in the Official Gazette, and was the subject matter of Exh.38, was not proximate in point of time to the notification published under Section 4(1) of the Act in the instant case and, therefore, the Reference Court was justified in excluding the same while determining the market value of the lands acquired in the instant case.

Exh.39, which is previous award relating to the lands of this very village, indicates that the lands of village Koth were acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on April 23, 1998. Therein, the Special Land Acquisition Officer by his award dated June 14, 1999 had offered compensation to the claimants at the rate of Rs.1.90 ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court,

Ahmedabad Rural, where they were registered as Land Acquisition Cases No.159 of 2001 to 171 of 2001. Therein, on behalf of the claimants, witness Lalubhai Jasmatsang was examined at Exh.31, but, no one was examined on behalf of the acquiring authorities. On the basis of another award of the Reference Court relating to the lands of this very village, the Reference Court by judgment and award dated December 10, 2003 awarded additional amount of compensation to the claimants at the rate of Rs. 27.90 ps. per sq.mt. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired from the same village subsequently. The evidence on record indicates that all the lands of village Koth acquired were similar in all respects, including fertility. It is not the case of the appellants that the previous award of the Reference Court produced by

the claimants at Exh.39 has not attained finality, in the sense that it was modified by the higher forum. The learned counsel for the claimants has produced a simple copy of judgment dated November 7, 2006 rendered by the Division Bench in First Appeal No.3341 of 2006 to First Appeal No.3353 of 2006, which indicates that the previous award of the Reference Court rendered in Land Acquisition Cases No. 159 of 2001 to 171 of 2001 was confirmed by the High Court. Therefore, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of this very village produced at Exh.39, for the purpose of determining the market value of the lands acquired in the instant case. Further, the lands of village Koth were previously acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on April 23, 1998; whereas in the instant case,

notification issued under Section 4(1) of the Act was published in the Official Gazette on February 5, 2000, and in view of the time-gap between the two notifications, the claimants would be entitled to the benefit of reasonable rise in price of the lands at the rate of 10% per annum. However, it is agreed between the parties that the calculation made by the Reference Court regarding additional amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of this very village, which is produced at Exh.39, is erroneous, and that the claimants, in all, would be entitled to compensation at the rate of Rs.35/- per sq.mt. and not at the rate of Rs.35.64 ps. as held by the Reference Court. Except the error, which is committed by the Reference Court in calculating the additional amount of compensation payable to the claimants, this Court finds that correct findings of facts have been recorded by the Reference Court on appreciation of evidence to which settled

principles of law have been applied. The learned Assistant Government Pleader could not persuade the Court to take a view different than the one taken by the Reference Court on appreciation of evidence. Thus, the prayer to restore the award of the Special Land Acquisition Officer cannot be granted, but, the appeals will have to be accepted in part as indicated above.

For the foregoing reasons, all the appeals partly succeed. The judgment and award dated December 30, 2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpur, in Land Acquisition Case Nos.2 of 2003 to 21 of 2003 awarding compensation, in all, at the rate of Rs. 35.64 Ps. per sq.mt. to the claimants, is hereby modified and it is held that the claimants would be entitled to compensation, in all, at the rate of Rs.35/- per sq.mt. for their acquired lands. The other benefits, which are granted to the claimants by the impugned award are not interfered with at all and are

hereby confirmed. The appeals are allowed to the extent indicated hereinabove only. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT.ABHILASHA KUMARI, J.]

(patel)